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ABSTRACT

As the "New Deal" era of the "Great Depression" promised relief from the publicly perceived failures of business and industry, a corresponding attitude of consumerism arose, aimed at "Big Business's" accomplice, advertising. Across the nation, national and local consumer protection organizations arose, and nonconsumer related organizations adopted consumer objectives. From 1930 through 1940, as many as 50 organizations worked at one time or another for the passage of national consumer legislation. Advertisers who had been dismissing the existence of the consumer movement were forced to take notice of the federal government's response to consumer activity. Consumers turned their attention to restoring and expanding the powers of the Federal Trade Commission, which had been greatly restricted by the Roosevelt appointed but business-controlled National Recovery Administration. After 5 years of unsuccessful attempts to pass consumer legislation, Congress passed the Copeland Bill (a pure food, drug, and cosmetic labeling act) and the Wheeler-Lea Act, which gave the Federal Trade Commission power to stop false advertising or ads that were deceptive by omission. Business and advertising on the one hand and consumers and government on the other claimed victory in the passage of these two laws, the former having influenced the final statutes to their advantage by excluding false advertising from the control of the Food and Drug Administration. (HTH)

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ADVERTISING AND REGULATION DURING THE NEW DEAL ERA 1933 - 1941

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Overview

American society was influenced by three major factors during the period 1933-1941: the presidency of Franklin Delano Roosevelt, the New Deal philosophy of the Democratic party and the resulting legislation, and, the Depression. Roosevelt was the central force in the New Deal's attempt to solve the problems of the Depression.

A scion of a wealthy New York family, Roosevelt served in the State Senate and later as Assistant Secretary of the Navy during Woodrow Wilson's administration. In 1920 he was nominated as the Democratic candidate for the vice-presidency. During the unsuccessful campaign with James M. Cox, Roosevelt gained national attention. After succumbing to polio in 1921 he built back both his health and his political power base to such a degree that he was able to be elected Governor of New York in 1928. From Albany he was able to regain national popularity.

By 1932, as a result of "the resolute inactivity of President Hoover, through three years of depression"[1] Roosevelt was elected President. He was prepared for the difficult task facing him as he "combined audacity with caution; stubborn as to ultimate ends, he was an opportunist as to means, and he knew when to compromise."[2]

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[1]Thornton Anderson, Jacobson's Development of American Political Thought, 2nd ed. (New York: Appleton-Century-Crofts, 1961), p. 562.

[2]Morrison, American People, p. 951.

Along with his interest in goverment and politics, Roosevelt also appreciated advertising:

> If I were starting life over again, I am inclined to think I would go into the advertising business in preference to almost any other. This is because advertising has come to cover the whole range of human needs and also because it combines real imagination with a deep study of human psychology.[3]

In facing the Depression, Roosevelt was to need many of the same abilities as were required of advertising men.

The Depression, beginning in 1929, "and subsequent events brought rapidly to the fore something like a revolution in thinking which . . . touched every aspect of economic, political, and social life."[4] The year 1933, when Herbert Hoover left the presidency, "marks the grave of the laissez-faire nineteenth century state."[5] In its place came Roosevelt and the New Deal. Roosevelt's policy was "a conscious effort, through legislation, to enhance the welfare and eventual security of simple folk throughout the country. These, at his accession, felt completely helpless, humiliated by the financial and business barons who had deceived them, and neglected by the previous administration."[6]

People demanded relief from the conditions the Depression had created; government stepped in to provide it. Because of the complexity of the problems, certain aspects of society were singled out for reform:

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[3]Advertising Age, The World of Advertising (Chicago: Advertising Publications, Inc., 1963), p. 249.

[4]Hower, Advertising Agency, p. 185.

[5]Morrison, American People, pp. 946-947.

[6]Ibid., p. 947.

> Business and industry, it was felt, had failed the country. Angry and frightened, people loudly accused them and the banks for having ruined them. Somehow, something or everything had reneged on the golden promises of millennium for everyone tomorrow, or, at the latest, by noon the day after. . . . There had to be a villian. Advertising as the public voice of industry was obvious and accessible to attack. Advertising had been used to urge people to expenditures they could not afford, to lure with false promises, to lull into false security. Advertising was to blame, and shrill cries arose for its annihilation.[7]

Because the advertising industry had failed to effect strong self-regulatory measures after World War I, it was open to attack. Even if the industry had taken strong action prior to 1933 it is doubtful if it would have survived the New Deal era unscathed. However, if it had been dealing from a position of strength rather than weakness, the industry would have been better able to withstand the assault.

Rise of Consumerism

As a result of the favorable public reation to Your Money's Worth, a book by Stuart Chase and F. J. Schlink that bitterly condemned both business and advertising, writers quickly jumped on the band wagon. In 1934 Skin Deep, an expose of the cosmetic industry, and Our Master's Voice, by an embittered former copywriter, were published; in 1935, Eat, Drink and Be Wary, an examination of the food industry, Partners in Plunder, a critical view of the business world, and Counterfeit, a compilation of exposes of advertised articles from Consumers' Research publications; and, in 1936, The American Chamber of Horrors, an account of destructive drugs and foods, appeared.[8]

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[7]James Playsted Wood, The Story of Advertising (New York: Ronald Press, 1958), p. 418.

[8]Chase and Schlink, Money's Worth. M. C. Phillips /Mrs. F. J. Schlink/ Skin Deep (Garden City, N. Y.: Garden City Publishing Co., 1934); James Rorty, Our Master's Voice (New York: John Day Co., 1934); F. J. Schlink, Eat, Drink and Be Wary (New York: Covici, Friede, Inc., 1935);

In addition to their books, many of these writers were published in the periodical press.[9] According to a Department of Agriculture study: "That a widespread change in public attitude was taking place is reflected in the fact that more magazine articles on consumers and their problems were published during twelve months in 1933-1934 than in the twenty-year period from 1900 to 1920."[10] James P. Wood, in reviewing the period concluded: "There were truths and partial truths in these books. There were also distortions. The fanaticism and malevolence were as apparent as their ballyhooed sympathy for the maltreated consumer. . . . industries virtually in toto, were speared, tormented and dispatched" by this wave of literature.[11]

As the books and articles multiplied, so did the membership rolls of Consumers Research, a consumer protection organization. By 1935, it claimed 50,000 subscribers to the product testing reports it published. The reports, which assigned products into "Recommended," "Intermediate," and "Not Recommended" categories, were supplied to subscribers only after a pledge that the information would be held in confidentiality. In 1936

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[8](Continued from page 114)J. B. Matthews and R. E. Shallcross, Partners in Plunder (New York: Covici, Friede, Inc., 1935); Arthur Kallet, Counterfeit (New York. Vanguard Press, 1935); Ruth de Forest Lamb, American Chamber of Horrors (Toronto: Oxford University Press, 1936).

[9]For example, see F. J. Schlink, "Safeguarding the Consumer's Interest," Annals of the American Academy of Political and Social Sciences, May 1934; "Consumers Organize!" Christian Sentinel, June 1934; and, Stuart Chase, "Advertising: An Autopsy," The Nation, 16 May 1934.

[10]Quoted in Hower, Advertising Agency, p. 186.

[11]Wood, Story of Advertising, p. 420.

a dispute over labor matters caused a split in the organization resulting in the formation of a competing group, Consumers Union. Together the two groups had secured around 100,000 members by the mid-1930's.[12]

These national protective organizations were but one aspect of a grass-roots movement. Across the nation, groups grew up in as many sizes and with as many specialized causes as there were organizations. Some banded together, like the National Federation of Settlements (NFS) which had 20 to 30 affiliated clubs. But most went their own way. Most were also local in nature.[13]

Meanwhile, organizations, both local and national, whose primary interest had previously been focused elsewhere, adopted consumer objectives. Women's clubs, parent-teacher groups, women's rights leagues, and welfare and labor organizations, in order to keep up with the concerns of their members, began to interest themselves with consumer problems. Some of the more prominent among these organizations were the American Association of University Women (AAUW), the National League of Women Voters (NLWV), and the General Federation of Women's Clubs (GFWC). In the ten years preceding 1940, as many as 50 organizations had worked at one time or another for the passage of national consumer legislation. According to the results of a Gallup survey in 1940 for the Association of National Advertisers (ANA), these organizations represented a total membership of over 20 million people.[14]

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[12]Sorenson, Consumer Movement, p. 33.

[13]Ibid.

[14]"Gallup Survey of Consumer Groups," Advertising Age, 28 October 1940, p. 2.

As consumer problems became more important to wider segments of the population, they became recognized by teachers and the governing bodies of educational institutions. School curricula began to reflect the increased interest. The idea of "education for living" developed in terms of teaching children as "interdependent members of a great and complex economic community." Special courses in the science of being a consumer were added at the high school level. By the late 1930's, approximately two-thirds of the high schools in the nation had home economic departments. Consumer courses became mandatory in some states and taught in many others.[15]

Some of the consumer sentiment was expressed in direct economic activity through the growth of the consumer cooperatives. In 1933 there were 1,854 retail co-ops in the United States. By 1935 the number had reached 6,600 with a total membership of 1,800,000. Total sales were insignificant, however, at $365,000,000--only 1 percent of the country's total retail sales. Until 1937 retailers were not worried about the growth of cooperatives because retailers were recovering faster than co-ops were growing. But in that year sales of cooperatives increased 23.6 percent, much above the increase rate of retailing as a whole.[16]

The rapid growth of the consumer movement had a definite impact on the advertising industry. Quickly, it began to mobilize its forces before the consumer movement influenced Congress to enact harsh legislation. The Advertising Federation of America (AFA) conducted a survey among its members:

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[15]Sorenson, Consumer Movement, pp. 56-57.

[16]Printers' Ink, Fifty Years, pp. 463-437.

> to determine just what they think ought to be done to combat widespread criticism of the industry. Eighty-three percent of the 250 replies received to date endorse the idea of public education campaign which the A.F.A. will conduct among women's groups, college students, and various business groups; one percent felt that such a drive might defeat the ends sought; ten percent believed the criticisms were justified, recommended that advertising first clean its house; six percent were noncommittal.[17]

Six months later Business Week reviewed the steps being taken by the industry under the headline: "Advertising's Counter-Offensive: on six major fronts, the advertising fraternity unlimbers its big guns in what amounts to a national drive against the radical prophets of the consumer cause."[18] Among the steps taken by various aspects of the industry were:

a. The ANA invited Dr. Walter B. Pitkin to address its annual meeting at White Sulphur Spring, West Virginia. Pitkin, of Columbia University, was billed as 'a champion who has already rendered yeoman service. . . /to/ stem the time of consumer resistance.'

b. The National Advisory Council of Consumers and Producers, an ad hoc group sponsored by large manufacturers, surveyed women regarding their attitudes toward advertising and planned to publish a book containing the results.

c. The AFA distributed a series of fifteen articles on advertising to media. They also developed a bibliography of books on advertising for distribution to high school and college teachers.

d. The American Newspaper Publishers Association planned a series of house ads for newspapers which would stress 'the service rendered by advertising.'[19]

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[17]"Czars for Advertising," Business Week, 4 May 1935, p. 20.

[18]"Advertising's Counter-Offensive," Business Week, 4 May 1935, p. 20.

[19]Ibid.

The ANA and the American Association of Advertising Agencies (AAAA) announced plans in 1932 to create a Review Committee to enforce a list of ethical standards agreed upon by the two associations. The standards included prohibitions against: false statements, misleading exaggerations, indirect misrepresentations, suggestions offensive to the public decency, efforts to undermine another industry, misleading price claims, psuedo-scientific advertising, and fake testimonials.[20] The Review Committee was to work with the National Better Business Bureau (BBB),[21] "to act as a court of appeals on cases in which advertisers refuse to accept decisions of the National Better Business Bureau."[22] The Review Committee functioned for a time with minor accomplishments and then was never heard from again.

These steps may have had some success if they had been undertaken a decade earlier when there was little pressure on the industry. Educational campaigns, speakers bureaus, house ads, and books could have gradually educated the American public to the validity and basic honesty of advertisers over a period of time. The Review Committee, if it had been allowed to operate out of the glaring spotlight of publicity in its founding days, might have developed gradually both the techniques for advertising evaluation and a reputation for fairness to both advertisers and consumers. However, the tide of events was rushing too quickly and the industry was soon faced with not only answering its consumer critics but also responding to New Deal legislation which would, if enacted, bring the industry under closer control by government.

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[20]This same set of guidelines, with revisions, is still in use today by the AAAA and the ANA. See Chapter I, supra.

[21]Basically this same concept was revived during the creation of the National Advertising Review Board in 1971. See Chapter VII, infra.

[22]Robert S. Mann, "Advertising 'Supreme Court' Formed," Editor and Publisher, 28 May 1932, p. 7.

Federal Regulatory Proposals

Advertisers, who, with a few notable exceptions, had been "airily dismissing the existence of the consumer movement," were forced to begin taking notice of the federal government's response to consumer activity.[23] In 1933 the New Deal had two of its attempts at economic recovery passed by Congress: the National Industrial Recovery Act (NIRA) and the Agricultural Adjustment Act (AAA). Neither of the laws was strongly resisted by the advertising community despite the fact that they contained consumer protection offices. The National Recovery Administration (NRA) was actually welcomed by many segments of the business community since it found it could not solve by itself the economic dilemmas of the depression.[24] To protect the consumer, the NRA established the Consumers' Advisory Board (CAB), a non-political office to be representative of consumer interests. It was to interpret governmental policies and actions to consumers and report consumers' conditions and reactions back to Washington.

While consumerists were generally encouraged by the measures of the Consumers' Advisory Board itself, there was often vociferous contempt for the NRA and its leadership. The work of the board, they said, was rendered ineffective because "big business" was in control of the NRA. The guidelines, or codes, established by the NRA allowed businesses to form monopolies and fix prices.[25] Rather than aiding the nation's recovery, the NRA was creating cartels.[26] Where it did accomplish monetary redistribution, it was not for the consumer per se, but for labor which just

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[23]Printers' Ink, Fifty Years, p. 437. [24]Ibid., p. 438.

[25]James Rorty, "The Consumer vs. the NRA," The Nation, 13 March 1934, p. 295.

[26]Mauritz A. Hallgren, "The NRA Oil Trust," The Nation, 13 March 1934, pp. 271-273.

happened to include consumers. There was a general failure, according to some consumerists, on the part of the NRA and the whole government, to recognize individuals as income spenders as distinguished from income recipients. Getting money into the hands of individuals was one thing; helping them to spend it properly was another.[27]

The Consumers' Advisory Board faced serious problems. Its initial difficulty was to define what was meant by the "nebulous, new, and consequently, misunderstood concept of a consumer interest."[28] By the time this question was settled, business interests were well entrenched in the NRA, and the Board had had difficulty in obtaining NRA approval for operating guidelines for various industries. As a result, only 70 of the 220 codes written included clauses relating to consumer wants, quality standards, grading and product information. And, few of the clauses that were passed were worthwhile from the consumerists' point of view.[29]

The NRA was declared unconstitutional in May 1935, less than two years after its passage, by the Supreme Court.[30] Because of the NRA's shortcomings, and then its abolishment, pressure for advertising reform was shifted to other areas. In 1931, the Supreme Court, in the Raladam case,[31] had ruled "that injury or the tendency to injure competition be

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[27]Paul H. Douglas, "The Place of the Consumer in the New Industrial Setup," Journal of Home Economics, October 1934, pp. 469-476. See also Hazel Kirk, "The Government and the Consumer," Journal of Home Economics, April 1935, pp. 201-206.

[28]Sorenson, Consumer Movement, p. 16.

[29]Rorty, "Consumer vs. NRA," p. 323.

[30]Morrison, American People, p. 957.

[31]See Appendix A, "Federal Regulation," infra.

shown before bad advertising could be assailed."[32] As a result the FTC was greatly restricted in its ability to protect the consumer. Therefore, consumers turned their attention to attempts both to restore and to expand the powers of the FTC.

Sen. Royal S. Copeland, following the Supreme Court's Raladam decision, introduced legislation to "extend Sect. 8 of the Food and Drugs Act of June 30, 1905 as amended, to include the false or deceptive advertising of drugs."[33] The bill died in committee. But the following year Sen. David I. Walsh went a step further to expand the authority of the FTC. The Walsh bill detailed those areas to be defined as unfair methods of competition. The bill included:

> All acts of every kind and nature which might tend to mislead or deceive competitors, the public, or the ultimate consumer, such as misstatements, expressed or implied, oral or written, whether contained in letters, circulars, advertisements, or on labels, containers or otherwise, as to quality, purity or condition of the goods offered for sale, or as to the weight, measure, numerical count or content thereof in any package or container; or as to the nature, character, or identity or relative or effective quantity of the raw materials or ingredients or the process or conditions entering into the manufacture or production thereof. . .[34]

Like the Copeland bill, Walsh's proposed legislation died in committee. However, attempts to strengthen government regulation of advertising continued.

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[32]Geller, Crossroads, p. 153.

[33]U. S. Congress, Congressional Record, vol. 74, part 2 (Washington: U. S. Government Printing Office, 1931), p. 1901.

[34]U. S. Congress, Congressional Record, vol. 75, part 3 (Washington: U. S. Government Printing Office, 1932), p. 2601.

A year later Printers' Ink reported a new piece of legislation was being drafted by the Assistant Secretary of Agriculture, Rexford T. Tugwell. The proposed bill would regulate food and drug advertising but would not require advertising to be cleared before insertion. The magazine opposed the Tugwell proposal and suggested that the Printers' Ink Model Statute be made federal legislation instead.[35] Sen. Arthur Capper, a Kansas publisher, shortly thereafter introduced the Model Statute as proposed federal legislation.[36]

A few months after the Capper bill was introduced, Sen. Copeland introduced the Tugwell legislation. The Tugwell Bill went a "long way beyond amending and putting teeth in . . . /the existing/ laws." It was "not just reform, but a revolution of the whole theory governing the field."[37] Opponents of the proposed legislation assumed the broad licensing power the bill granted to the Secretary of Agriculture would allow him to establish whatever requirements he deemed appropriate for issuance. This could be a dangerous tool in the hands of a person like the bill's author, who believed "that government control of industry will inevitably take place of mere regulation."[38]

As the bill related to advertising, it read:

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[35]"U. S. Law Regulating Advertising is Under Way," Printers' Ink, 4 May 1933, p. 10. See Appendix B, Printers' Ink Model Statute for further details, supra.

[36]U. S. Congress, Congressional Record, vol. 77, part 3 (Washington: Government Printing Office, 1934), p. 2966

[37]Alfred E. Smith, "A Happy New Year: The Tugwell Bill," New Outlook, January 1934, p. 10.

[38]Ibid.

> An advertisement of a food, drug, or cosmetic shall be deemed to be false if in any particular it is untrue, or by ambiguity or inference creates a misleading impression regarding such food, drug, or cosmetic.[39]

The bill went on to define drugs as "all substances and preparations other than food, and all devices intended to affect the structure or any function of the body of man or other animals." It defined cosmetics as preparations of substances for cleansing or altering the appearance of a person.[40]

The advertising industry's response was immediate. Virtually all of the various advertising groups rallied round to support the Capper bill and to oppose Copeland's proposal. The industry was concerned; it had already lost control over one form of advertising when Congress passed the Securities Act of 1933. This law was supported by Depression-born social pressure on Congress to stop the financial dealings that led to the 1929 stock market crash. It disallowed the promotion of securities and forced the advertisements for them to take the form of announcements only. To the advertising industry the law made financial advertising self-defeating. The industry realized that if this could happen to finance, it could happen to any or all areas of business.[41] Advertisers would not stand by and watch it happen to the food, drug, and cosmetics industry without a fight.

After it was obvious the Capper bill would not pass Congress, the advertising industry turned on the Copeland bill. One writer said it "attempts to penalize all because of the sins of a relative few."[42]

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[39]U. S. Congress, Congressional Record, vol. 77, part 3, p. 2966.

[40]Ibid.

[41]Wood, Story of Advertising, p. 429.

[42]G. A. Nichols, "Beat the Tugwell Bill," Printers' Ink, 2 November 1933, p. 6.

Earnest Elmo Calkins, a recognized advertising leader, commented, "I always tremble when legislators approach advertising. It is not that I do not believe in honest advertising. Quite the contrary. . . . But legislators, even when sincere, do not comprehend advertising."[43] The legislation was defeated in 1933, and a revised version introduced by Copeland the following year also was defeated.

The lack of action on the Copeland bills served to consolidate the efforts of the consumerists. In 1933, there were only two groups, the American Home Economics Association (AHEA) and the National Congress of Parents and Teachers (NCPT), supporting the Copeland bill. By the end of the five-year battle for the bill and its successors, there were at least 16 organizations working for legislation similar to that originally proposed by Copeland.[44] Business recognized what was happening with these organizations and decided to organize several groups to support its own position. The National Advisory Council of Consumers and Producers (NACCP),[45] and the Joint Committee for Sound and Democratic Consumer Legislation (JCSDL) were formed to take some of the wind out of the consumer argument. At Congressional hearings, members of these organizations testified along the same lines as industry representatives.[46]

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[43]"What Kind of Regulation Does Advertising Need?" Advertising and Selling, 7 December 1933, p. 15.

[44]Sorenson, Consumer Movement, p. 13.

[45]See Note 16, supra.

[46]"Consumer Movement," Business Week, p. 44. According to Sorenson, Consumer Movement, pp. 13-14, resentment toward these "psuedo-consumer groups" was an important factor in unifying the "real consumerists."

In 1935 Copeland introduced another revised version of his bill. This Copeland bill, based on the original Tugwell concept, placed the administration of the act in the hands of the Food and Drug Administration (FDA).[47] The Federal Trade Commission (FTC) entered the scene at this point and opposed the Copeland bill because it felt it infringed on its authority. The FTC argued, because it had regulatory power in the area of competitive practices, it should administer advertising regulations.[48] Now there were three positions being argued: (1) place advertising regulations in the hands of the FDA; (2) place advertising regulations in the hands of the FTC, and; (3) pass no legislation regarding advertising regulation.

In 1936 Sen. Burton K. Wheeler introduced legislation to give the FTC authority to deal with "unfair and deceptive ads."[49] Opposition to the Wheeler Act came from such groups as the National Editorial Association (NEA), American Newspaper Publishers Association (ANPA), National Publishers Association (NPA), Chamber of Commerce of the United States (CCUS), and, the National Association of Manufacturers (NAM).[50] Neither the Copeland nor Wheeler measures passed in that year. However, the following year both pieces of legislation were reintroduced and Rep. Clarence F. Lea introduced a companion bill to the Wheeler proposal in the House of Representatives.

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[47]U. S. Congress, Congressional Record, vol. 79, part 1 (Washington: Government Printing Office, 1935), p. 100.

[48]"Consumer Movement," Business Week, p. 44.

[49]U. S. Congress, Congressional Record, vol. 80, part 1 (Washington: Government Printing Office, 1936), p.553.

[50]"Wheeler-Rayburn Hearings," Printers' Ink, 5 March 1936, p. 74.

Finally, in 1938 success came to the supporters of reform. The Wheeler-Lea Act[51] was passed in March and the Copeland bill (Pure Food, Drug and Cosmetic Act)[52] was passed in June. Both were signed into law by Pres. Roosevelt. The basic changes brought about by the Wheeler-Lea Amendments to the FTC Act were:

1. The Commission's jurisdiction was extended to include unfair or deceptive acts or practices in commerce, in addition to unfair methods of competition. This served to dispense with the requirement, imposed by the Raladam decision, that injury or the tendency to injure competition be shown before bad advertising could be assailed.

2. The Commission's orders to cease and desist were self-executory within sixty days of issuance, thereby eliminating an action by the Commission to secure a judicial enforcement order.

3. The Commission was given specific jurisdiction over the false advertising of food, drugs, cosmetics, and devices. This included not only false representations but also the failure to reveal material facts. Not only was the advertiser liable if he told a deliberate falsehood, but he was also responsible for deception by omission.

4. In the case of falsely advertising a commodity, where use of the commodity as a result of the advertisement might be injurious to health, the Commission was empowered to bypass the usual procedure of complaint and hearing before issuing a cease and desist order. In such a situation where injury to health might result, the Commission had authority, upon a proper showing, to seek a temporary injunction pending a formal hearing. Failure to obey the injunction subjects the advertiser to criminal penalties.[53]

The Copeland Bill gave the FDA authority to prevent the adulteration, misbranding, and advertising of foods, drugs, and cosmetics.

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[51] U. S. Statutes, 52 Stat. 114, 15 U.S.C.A. Supp. IV and V (1938).

[52] U. S. Statutes, 52 Stat. 1040, 21 U.S.C. Chap. I (1938).

[53] Geller, Crossroads, p. 153.

The FDA and FTC, even though both were given some powers over advertising, have had working agreements in order to resolve the conflicting jurisdiction of the two agencies. The agreement "provides that the FTC shall have primary jurisdiction over the truth or falsity of advertising (excluding labeling) of foods, drugs, and cosmetics, except for prescription drugs."[54]

Both sides, business and advertising on one hand and the consumerists and government on the other, could claim victory in the passage of the Wheeler-Lea Amendments and the Copeland Act. The new powers given to the FTC allowed it to deal with "unfair and deceptive practices" which were "misleading." The FDA now could deal with products which failed to reveal material facts on their labels. This expansion of power did provide some degree of consumer protection. Business and advertising, while not defeating the legislation, did influence the final statutes to their advantage.

> But the opponents of the bill, so they believed, were not without victory. The /FDA/ Act as passed, had eliminated all provisions relating to advertising. The opposition to the inclusion of such provision was not based on an attempt to exclude any prohibition of false advertising, for such a position would have been impossible to sustain. The opposition was based, instead, on the desire to exclude false advertising from the control of the Pure Food and Drug Administration, which was believed to be too strong as a result of the new Act. The lobbyists for business and advertising were aware that the Federal Trade Commission's standing in the courts was weak as a result of the Raladam case. Accordingly, they maintained that control over false advertising of foods and drugs should be placed, if at all, in the hands of the agency already active in the advertising field, namely, the Federal Trade Commission, hoping thereby to secure a not too vigorous enforcement of the Act. It was thus that Sections 12 and 13 came to be included in the amendments to Federal Trade Commission Act,

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[54]Rosden and Rosden, Law, pp. 11-36.

> and the irony of the situation is that the Commission acquired this new power because it was deemed too weak to exercise it effectively.[55]

In the end, the industry found it could live with the legislation--and possibly it learned a lesson in the process.

> . . . the course ahead is plain. More essential now than ever before is self-censorship--the kind of self-censorship that if it had been imposed earlier, might have rendered the Wheeler-Lea amendment unnecessary.[56]

This period was, concluded Hower:

> . . . a perplexing one for the entire advertising industry. Faced with acute operating difficulties because of the total business situation, subjected to public ridicule and to sharp attacks by reformers, harassed by bitter competition within the industry and by rapid change in business generally, and threatened with legislative action of a drastic nature, every phase of advertising was forced to undergo readjustment. It emerged considerably deflated, both in the eyes of the consuming public and in the opinion of the firms that used it. And yet it emerged a more effective and essential mechanism than ever in our social and economic life.[57]

The major question the industry had to ask itself was: "What did we learn and where do we go from here?" This was the same question asked at the end of the Muckraking era and it was not resolved then. As a result, the ground was laid for the New Deal legislation. The next years would demonstrate if the industry had gained anything from its experience.

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[55]Geller, Crossroads, pp. 152-153.

[56]"Lea Act a Law," Printers' Ink, 31 March 1938, p. 77.

[57]Hower, Advertising Agency, p. 152.

A New View of Regulation

During the five-year struggle for the Copeland Act, the consumer movement became the "No. 1 problem of American business and industry."[58] Producers and manufacturers could no longer laugh it off or try to blame the activity on "Red subversives" as some had attempted.[59]

Instead, business found it necessary to develop new tactics to combat the movement. Some set up "public relations" programs in an effort to tell their side of the story to the consumer. They distributed literature and study programs for school and adult courses. Others established external reforms. Some of this activity was a demonstration of honest concern. According to consumerists, however, some of it was an attempt by business to propagandize consumers.[60]

Other firms tried to develop a real relationship with the consumer. Retailers, who are in the closest contact with consumers, were the first to do this. They, and a few producers, began to provide more product information and to tell the buyer what to expect from merchandise. Some of this activity took the form of direct cooperation between consumer groups and business. Most of it, however, took the form of special guarantees or seals of approval to verify quality. Many companies found such practices profitable.

However, before any real reforms by industry or before any real testing of authority by the FTC or FDA could take place, the United States was thrust into a war which ended the New Deal era. The consumer movement, self-regulation, and government intervention were relegated to low positions in the order of priority of American society.

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[58]Sorenson, Consumer Movement, p. 179. [59]Coles, Standards, p. 47.

[60]Sorenson, Consumer Movement, pp. 177-178.